

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Geren, Fallon

H.B. No. 2533

A BILL TO BE ENTITLED

1 AN ACT

2 relating to civil suits brought by local governments or certain  
3 other persons for violations of certain laws under the jurisdiction  
4 of, or rules adopted or orders or permits issued by, the Texas  
5 Commission on Environmental Quality.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 7.351, Water Code, is amended to read as  
8 follows:

9 Sec. 7.351. CIVIL SUITS. (a) Subject to Section 7.3511, if  
10 [~~if~~] it appears that a violation or threat of violation of Chapter  
11 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and  
12 Safety Code, a provision of Chapter 401, Health and Safety Code,  
13 under the commission's jurisdiction, or Chapter 1903, Occupations  
14 Code, or a rule adopted or an order or a permit issued under those  
15 chapters or provisions has occurred or is occurring in the  
16 jurisdiction of a local government, the local government or, in the  
17 case of a violation of Chapter 401, Health and Safety Code, a person  
18 affected as defined in that chapter, may institute a civil suit  
19 under Subchapter D in the same manner as the commission in a  
20 district court by its own attorney for the injunctive relief or  
21 civil penalty, or both, as authorized by this chapter against the  
22 person who committed, is committing, or is threatening to commit  
23 the violation.

24 (b) Subject to Section 7.3511, if [~~if~~] it appears that a

1 violation or threat of violation of Chapter 366, Health and Safety  
2 Code, under the commission's jurisdiction or a rule adopted or an  
3 order or a permit issued under that chapter has occurred or is  
4 occurring in the jurisdiction of a local government, an authorized  
5 agent as defined in that chapter may institute a civil suit under  
6 Subchapter D in the same manner as the commission in a district  
7 court by its own attorney for the injunctive relief or civil  
8 penalty, or both, as authorized by this chapter against the person  
9 who committed, is committing, or is threatening to commit the  
10 violation.

11 SECTION 2. Subchapter H, Chapter 7, Water Code, is amended  
12 by adding Section 7.3511 to read as follows:

13 Sec. 7.3511. PROCEDURE FOR CIVIL PENALTY; REQUIRED NOTICE.

14 (a) In this section:

15 (1) "Authorized agent" has the meaning assigned by  
16 Section 366.002, Health and Safety Code.

17 (2) "Person affected" has the meaning assigned by  
18 Section 401.003, Health and Safety Code.

19 (b) This section applies only to a civil suit under this  
20 subchapter that seeks a civil penalty for a violation of a statute,  
21 rule, order, or permit described by Section 7.351.

22 (c) Before instituting any claim in a suit described by  
23 Subsection (b), a local government, a person affected, or an  
24 authorized agent shall provide to the attorney general and the  
25 executive director of the commission written notice of each alleged  
26 violation, the facts in support of the claim, and the specific  
27 relief sought.

1       (d) A local government, a person affected, or an authorized  
2 agent may institute a suit described by Subsection (b) on or after  
3 the 90th day after the date the attorney general and the executive  
4 director of the commission receive the notice required by  
5 Subsection (c) unless before the 90th day after the date the notice  
6 is received the commission has commenced a proceeding under  
7 Subchapter C or the attorney general has commenced a civil suit  
8 under Subchapter D concerning at least one of the alleged  
9 violations set forth in the notice.

10       (e) If a local government, a person affected, or an  
11 authorized agent discovers a violation that is within 120 days of  
12 the expiration of the limitations period described in Section  
13 7.360, the local government, person affected, or authorized agent  
14 may institute a suit described by Subsection (b) on or after the  
15 45th day after the date the attorney general and the executive  
16 director of the commission receive the notice required by  
17 Subsection (c) unless before the 45th day after the date the notice  
18 is received the attorney general has commenced a civil suit under  
19 Subchapter D concerning at least one of the alleged violations set  
20 forth in the notice. In the circumstances described by this  
21 subsection, in addition to providing the notice required by  
22 Subsection (c), the local government, person affected, or  
23 authorized agent must provide a copy of the notice by certified mail  
24 or hand delivery to the chief of the division of the attorney  
25 general's office responsible for handling environmental  
26 enforcement claims.

27       SECTION 3. Section 7.357, Water Code, is repealed.

1           SECTION 4. The changes in law made by this Act apply only to  
2 a violation that occurs on or after the effective date of this Act.  
3 A violation that occurs before the effective date of this Act is  
4 governed by the law in effect on the date the violation occurred,  
5 and the former law is continued in effect for that purpose.

6           SECTION 5. This Act takes effect September 1, 2017.

ADOPTED

MAY 22 2017

*Atory Spaw*  
Secretary of the Senate

By: Green / Craig Estes

H.B. No. 2533

Substitute the following for H.B. No. 2533:

By: Craig Estes

C.S.H.B. No. 2533

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11 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and  
12 Safety Code, a provision of Chapter 401, Health and Safety Code,  
13 under the commission's jurisdiction, or Chapter 1903, Occupations  
14 Code, or a rule adopted or an order or a permit issued under those  
15 chapters or provisions has occurred or is occurring in the  
16 jurisdiction of a local government, the local government or, in the  
17 case of a violation of Chapter 401, Health and Safety Code, a person  
18 affected as defined in that chapter, may institute a civil suit  
19 under Subchapter D in the same manner as the commission in a  
20 district court by its own attorney for the injunctive relief or  
21 civil penalty, or both, as authorized by this chapter against the  
22 person who committed, is committing, or is threatening to commit  
23 the violation.

24 (b) Subject to Section 7.3511, if ~~[if]~~ it appears that a

1 violation or threat of violation of Chapter 366, Health and Safety  
2 Code, under the commission's jurisdiction or a rule adopted or an  
3 order or a permit issued under that chapter has occurred or is  
4 occurring in the jurisdiction of a local government, an authorized  
5 agent as defined in that chapter may institute a civil suit under  
6 Subchapter D in the same manner as the commission in a district  
7 court by its own attorney for the injunctive relief or civil  
8 penalty, or both, as authorized by this chapter against the person  
9 who committed, is committing, or is threatening to commit the  
10 violation.

11 SECTION 2. Subchapter H, Chapter 7, Water Code, is amended  
12 by adding Section 7.3511 to read as follows:

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14 (a) In this section:

15 (1) "Authorized agent" has the meaning assigned by  
16 Section 366.002, Health and Safety Code.

17 (2) "Person affected" has the meaning assigned by  
18 Section 401.003, Health and Safety Code.

19 (b) This section applies only to a civil suit under this  
20 subchapter that seeks a civil penalty for a violation of a statute,  
21 rule, order, or permit described by Section 7.351.

22 (c) Before instituting any claim in a suit described by  
23 Subsection (b), a local government, a person affected, or an  
24 authorized agent shall provide to the attorney general and the  
25 executive director of the commission written notice of each alleged  
26 violation, the facts in support of the claim, and the specific  
27 relief sought.

1       (d) A local government, a person affected, or an authorized  
2 agent may institute a suit described by Subsection (b) on or after  
3 the 90th day after the date the attorney general and the executive  
4 director of the commission receive the notice required by  
5 Subsection (c) unless before the 90th day after the date the notice  
6 is received the commission has commenced a proceeding under  
7 Subchapter C or the attorney general has commenced a civil suit  
8 under Subchapter D concerning at least one of the alleged  
9 violations set forth in the notice.

10       (e) If a local government, a person affected, or an  
11 authorized agent discovers a violation that is within 120 days of  
12 the expiration of the limitations period described in Section  
13 7.360, the local government, person affected, or authorized agent  
14 may institute a suit described by Subsection (b) on or after the  
15 45th day after the date the attorney general and the executive  
16 director of the commission receive the notice required by  
17 Subsection (c) unless before the 45th day after the date the notice  
18 is received the commission has commenced a proceeding under  
19 Subchapter C or the attorney general has commenced a civil suit  
20 under Subchapter D concerning at least one of the alleged  
21 violations set forth in the notice. In the circumstances described  
22 by this subsection, in addition to providing the notice required by  
23 Subsection (c), the local government, person affected, or  
24 authorized agent must:

25           (1) provide a copy of the notice by certified mail or  
26 hand delivery to the chief of the division of the attorney general's  
27 office responsible for handling environmental enforcement claims;

1 and

2 (2) include with the copy of the notice under  
3 Subdivision (1) a statement providing that the copy of the notice is  
4 being provided pursuant to this subsection.

5 SECTION 3. Section 7.357, Water Code, is repealed.

6 SECTION 4. The changes in law made by this Act apply only to  
7 a violation that occurs on or after the effective date of this Act.  
8 A violation that occurs before the effective date of this Act is  
9 governed by the law in effect on the date the violation occurred,  
10 and the former law is continued in effect for that purpose.

11 SECTION 5. This Act takes effect September 1, 2017.

ADOPTED

MAY 22 2017

*Debra Sewell*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY:

*Craig Estes*

1 Amend C.S.H.B. No. 2533 (senate committee printing) in  
2 SECTION 2 of the bill as follows:

3 (1) In added Section 7.3511(b), Water Code (page 2, line 4),  
4 between "only to" and "a civil", insert "a claim for a civil penalty  
5 in".

6 (2) In added Section 7.3511(b), Water Code (page 2, line 5),  
7 strike "that seeks a civil penalty".

8 (3) In added Section 7.3511(c), Water Code (page 2, line 7),  
9 strike "in a suit".

10 (4) In added Section 7.3511(d), Water Code (page 2, line  
11 14), strike "suit" and substitute "claim".

12 (5) In added Section 7.3511(e), Water Code (page 2, line  
13 26), strike "suit" and substitute "claim".

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 22, 2017**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2533** by Geren (Relating to civil suits brought by local governments or certain other persons for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2533, As Passed 2nd House: a positive impact of \$362,000 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2018	\$0
2019	\$362,000
2020	\$466,000
2021	\$569,000
2022	\$725,000

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Revenue Gain from General Revenue Fund</b>
	<b>1</b>
2018	\$0
2019	\$362,000
2020	\$466,000
2021	\$569,000
2022	\$725,000

## **Fiscal Analysis**

The bill would amend Texas Water Code, Chapter 7 by adding Section 7.5311 to require a local government, a person affected, or an authorized agent to provide written notice to the executive director of the Texas Commission on Environmental Quality (TCEQ) and the Attorney General (OAG) before filing a claim for a civil penalty in a civil suit; this notice would not be required if the suit seeks injunctive relief only. The written notice would include each alleged violation, the facts supporting the claim, and the specific relief sought. A claim may be instituted by a local government, a person affected, or an authorized agent on or after the 90th day after the OAG and the executive director of TCEQ receive the written notice, unless TCEQ has commenced a proceeding or OAG has commenced a civil suit concerning at least one of the alleged violations. If a local government, affected person, or authorized agent discovered the alleged violation within 120 days before a statute of limitations would expire, OAG and TCEQ would be required to review and act on the violations within 45 days, and the entity would be required to provide notice to OAG.

The bill would amend Texas Water Code, Section 7.351, which allows a local government, an affected person, or an authorized agent to bring a suit in the same manner as TCEQ for injunctive relief, civil penalties, or both. The bill would subject Section 7.351 to the added Section 7.5311, which would require written notice prior to filing the civil suit.

The provisions of the bill would apply only to a violation that occurs on or after the effective date of the Act. The bill would take effect September 1, 2017.

## **Methodology**

The bill would allow OAG and TCEQ to deny a local government, affected person, or authorized agent authorization to pursue a claim. OAG estimates that, of the cases referred by TCEQ subject to the provisions of the bill, approximately 10 percent would result in denials. OAG estimates approximately 20 percent of the cases would be initiated as administrative enforcement actions by TCEQ, and that approximately 10 percent of the referred cases would result in the commencement of a civil suit by OAG. OAG estimates that the remainder of the referrals would be allowed to proceed, leading to suits filed by local governments, affected persons or authorized agents.

This estimate assumes that administrative penalties assessed by TCEQ would be comparable to the civil penalty that would have been assessed by a court under current law and would be deposited to the credit of the General Revenue Fund. This estimate further assumes that the total penalty amount assessed by the court in cases referred to OAG for enforcement would be deposited to the credit of the General Revenue Fund.

OAG estimates that the total number of suits referred for consideration will have a growth rate of approximately 25 percent per year. This would result in 19 referrals in fiscal year 2018; 23 in fiscal year 2019; 29 in fiscal year 2020; 37 in fiscal year 2021; and 48 in fiscal year 2022. Using OAG's estimate concerning the number of cases initiated as administrative enforcement actions by TCEQ and the number of cases that would result in the commencement of a civil suit by OAG, 30 percent of these referrals would result in the collection of either administrative penalties (in the case of TCEQ administrative actions) or civil penalties (in the case of OAG action). This estimate assumes that 30 percent of the referrals would result in revenue gains to the General Revenue Fund, or 3 in fiscal year 2018; 7 in fiscal year 2019; 9 in fiscal year 2020; 11 in fiscal year 2021; and 14 in fiscal year 2022. OAG estimates that fiscal year 2018 revenue collections would not be affected, as it usually takes several months after a violation has occurred to work up and file a

lawsuit. Therefore, this estimate assumes no fiscal impact in fiscal year 2018. Future fiscal years would see a revenue gain approximately equal to the average recovery amount by local governments (\$51,750 according to OAG estimates) per case according to analysis provided by OAG and the Comptroller.

TCEQ and OAG estimate that the provisions of the bill could be implemented using existing resources.

### **Local Government Impact**

According to the Texas Association of Counties, the fiscal impact to counties cannot be determined at this time.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts,  
582 Commission on Environmental Quality

**LBB Staff:** UP, SZ, MW, MSO, JSm, JGA

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 18, 2017**

**TO:** Honorable Craig Estes, Chair, Senate Committee on Natural Resources & Economic Development

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** **HB2533** by Geren (relating to civil suits brought by local governments or certain other persons for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2533, Committee Report 2nd House, Substituted: a positive impact of \$362,000 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2018	\$0
2019	\$362,000
2020	\$466,000
2021	\$569,000
2022	\$725,000

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Revenue Gain from General Revenue Fund 1</b>
2018	\$0
2019	\$362,000
2020	\$466,000
2021	\$569,000
2022	\$725,000

## **Fiscal Analysis**

The bill would amend Texas Water Code, Chapter 7 by adding Section 7.5311 to require a local government, a person affected, or an authorized agent to provide written notice to the executive director of the Texas Commission on Environmental Quality (TCEQ) and the Attorney General (OAG) before filing a civil suit that seeks a civil penalty; this notice would not be required if the suit seeks injunctive relief only. The written notice would include each alleged violation, the facts supporting the claim, and the specific relief sought. A civil suit may be instituted by a local government, a person affected, or an authorized agent on or after the 90th day after the OAG and the executive director of TCEQ receive the written notice, unless TCEQ has commenced a proceeding or OAG has commenced a civil suit concerning at least one of the alleged violations. If a local government, affected person, or authorized agent discovered the alleged violation within 120 days before a statute of limitations would expire, OAG and TCEQ would be required to review and act on the violations within 45 days, and the entity would be required to provide notice to OAG.

The bill would amend Texas Water Code, Section 7.351, which allows a local government, an affected person, or an authorized agent to bring a suit in the same manner as TCEQ for injunctive relief, civil penalties, or both. The bill would subject Section 7.351 to the added Section 7.5311, which would require written notice prior to filing the civil suit.

The provisions of the bill would apply only to a violation that occurs on or after the effective date of the Act. The bill would take effect September 1, 2017.

## **Methodology**

The bill would allow OAG and TCEQ to deny a local government, affected person, or authorized agent authorization to pursue a suit. OAG estimates that, of the cases referred by TCEQ subject to the provisions of the bill, approximately 10 percent would result in denials. OAG estimates approximately 20 percent of the cases would be initiated as administrative enforcement actions by TCEQ, and that approximately 10 percent of the referred cases would be result in the commencement of a civil suit by OAG. OAG estimates that the remainder of the referrals would be allowed to proceed, leading to suits filed by local governments, affected persons or authorized agents.

This estimate assumes that administrative penalties assessed by TCEQ would be comparable to the civil penalty that would have been assessed by a court under current law and would be deposited to the credit of the General Revenue Fund. This estimate further assumes that the total penalty amount assessed by the court in cases referred to OAG for enforcement would be deposited to the credit of the General Revenue Fund.

OAG estimates that the total number of suits referred for consideration will have a growth rate of approximately 25 percent per year. This would result in 19 referrals in fiscal year 2018; 23 in fiscal year 2019; 29 in fiscal year 2020; 37 in fiscal year 2021; and 48 in fiscal year 2022. Using OAG's estimate concerning the number of cases initiated as administrative enforcement actions by TCEQ and the number of cases that would result in the commencement of a civil suit by OAG, 30 percent of these referrals would result in the collection of either administrative penalties (in the case of TCEQ administrative actions) or civil penalties (in the case of OAG action). This estimate assumes that 30 percent of the referrals would result in revenue gains to the General Revenue Fund, or 3 in fiscal year 2018; 7 in fiscal year 2019; 9 in fiscal year 2020; 11 in fiscal year 2021; and 14 in fiscal year 2022. OAG estimates that fiscal year 2018 revenue collections would not be affected, as it usually takes several months after a violation has occurred to work up and file a

lawsuit. Therefore, this estimate assumes no fiscal impact in fiscal year 2018. Future fiscal years would see a revenue gain approximately equal to the average recovery amount by local governments (\$51,750 according to OAG estimates) per case according to analysis provided by OAG and the Comptroller.

TCEQ and OAG estimate that the provisions of the bill could be implemented using existing resources.

### **Local Government Impact**

According to the Texas Association of Counties, the fiscal impact to counties cannot be determined at this time.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

**LBB Staff:** UP, SZ, MW, MSO, JSm, JGA

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 11, 2017**

**TO:** Honorable Craig Estes, Chair, Senate Committee on Natural Resources & Economic Development

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2533** by Geren (Relating to civil suits brought by local governments or certain other persons for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2533, As Engrossed: a positive impact of \$362,000 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2018	\$0
2019	\$362,000
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**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Revenue Gain from General Revenue Fund 1</b>
2018	\$0
2019	\$362,000
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## **Fiscal Analysis**

The bill would amend Texas Water Code, Chapter 7 by adding Section 7.5311 to require a local government, a person affected, or an authorized agent to provide written notice to the executive director of the Texas Commission on Environmental Quality (TCEQ) and the Attorney General (OAG) before filing a civil suit that seeks a civil penalty; this notice would not be required if the suit seeks injunctive relief only. The written notice would include each alleged violation, the facts supporting the claim, and the specific relief sought. A civil suit may be instituted by a local government, a person affected, or an authorized agent on or after the 90th day after the OAG and the executive director of TCEQ receive the written notice, unless TCEQ has commenced a proceeding or OAG has commenced a civil suit concerning at least one of the alleged violations. If a local government, affected person, or authorized agent discovered the alleged violation within 120 days before a statute of limitations would expire, OAG and TCEQ would be required to review and act on the violations within 45 days, and the entity would be required to provide notice to OAG.

The bill would amend Texas Water Code, Section 7.351, which allows a local government, an affected person, or an authorized agent to bring a suit in the same manner as TCEQ for injunctive relief, civil penalties, or both. The bill would subject Section 7.351 to the added Section 7.5311, which would require written notice prior to filing the civil suit.

The provisions of the bill would apply only to a violation that occurs on or after the effective date of the Act. The bill would take effect September 1, 2017.

## **Methodology**

The bill would allow OAG and TCEQ to deny a local government, affected person, or authorized agent authorization to pursue a suit. OAG estimates that, of the cases referred by TCEQ subject to the provisions of the bill, approximately 10 percent would result in denials. OAG estimates approximately 20 percent of the cases would be initiated as administrative enforcement actions by TCEQ, and that approximately 10 percent of the referred cases would be result in the commencement of a civil suit by OAG. OAG estimates that the remainder of the referrals would be allowed to proceed, leading to suits filed by local governments, affected persons or authorized agents.

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**Source Agencies:** 302 Office of the Attorney General, 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

**LBB Staff:** UP, SZ, MW, MSO, JSm, JGA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 25, 2017**

**TO:** Honorable Lyle Larson, Chair, House Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2533** by Geren (relating to civil suits brought by local governments or certain other persons for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2533, Committee Report 1st House, Substituted: a positive impact of \$362,000 through the biennium ending August 31, 2019.

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**All Funds, Five-Year Impact:**

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## **Fiscal Analysis**

The bill would amend Texas Water Code, Chapter 7 by adding Section 7.5311 to require a local government, a person affected, or an authorized agent to provide written notice to the executive director of the Texas Commission on Environmental Quality (TCEQ) and the Attorney General (OAG) before filing a civil suit that seeks a civil penalty; this notice would not be required if the suit seeks injunctive relief only. The written notice would include each alleged violation, the facts supporting the claim, and the specific relief sought. A civil suit may be instituted by a local government, a person affected, or an authorized agent on or after the 90th day after the OAG and the executive director of TCEQ receive the written notice, unless TCEQ has commenced a proceeding or OAG has commenced a civil suit concerning at least one of the alleged violations. If a local government, affected person, or authorized agent discovered the alleged violation within 120 days before a statute of limitations would expire, OAG and TCEQ would be required to review and act on the violations within 45 days, and the entity would be required to provide notice to OAG.

The bill would amend Texas Water Code, Section 7.351, which allows a local government, an affected person, or an authorized agent to bring a suit in the same manner as TCEQ for injunctive relief, civil penalties, or both. The bill would subject Section 7.351 to the added Section 7.5311, which would require written notice prior to filing the civil suit.

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## **Methodology**

The bill would allow OAG and TCEQ to deny a local government, affected person, or authorized agent authorization to pursue a suit. OAG estimates that, of the cases referred by TCEQ subject to the provisions of the bill, approximately 10 percent would result in denials. OAG estimates approximately 20 percent of the cases would be initiated as administrative enforcement actions by TCEQ, and that approximately 10 percent of the referred cases would result in the commencement of a civil suit by OAG. OAG estimates that the remainder of the referrals would be allowed to proceed, leading to suits filed by local governments, affected persons or authorized agents.

This estimate assumes that administrative penalties assessed by TCEQ would be comparable to the civil penalty that would have been assessed by a court under current law and would be deposited to the credit of the General Revenue Fund. This estimate further assumes that the total penalty amount assessed by the court in cases referred to OAG for enforcement would be deposited to the credit of the General Revenue Fund.

OAG estimates that the total number of suits referred for consideration will have a growth rate of approximately 25 percent per year. This would result in 19 referrals in fiscal year 2018; 23 in fiscal year 2019; 29 in fiscal year 2020; 37 in fiscal year 2021; and 48 in fiscal year 2022. Using OAG's estimate concerning the number of cases initiated as administrative enforcement actions by TCEQ and the number of cases that would result in the commencement of a civil suit by OAG, 30 percent of these referrals would result in the collection of either administrative penalties (in the case of TCEQ administrative actions) or civil penalties (in the case of OAG action). This estimate assumes that 30 percent of the referrals would result in revenue gains to the General Revenue Fund, or 3 in fiscal year 2018; 7 in fiscal year 2019; 9 in fiscal year 2020; 11 in fiscal year 2021; and 14 in fiscal year 2022. OAG estimates that fiscal year 2018 revenue collections would not be affected, as it usually takes several months after a violation has occurred to work up and file a

lawsuit. Therefore, this estimate assumes no fiscal impact in fiscal year 2018. Future fiscal years would see a revenue gain approximately equal to the average recovery amount by local governments (\$51,750 according to OAG estimates) per case according to analysis provided by OAG and the Comptroller.

TCEQ and OAG estimate that the provisions of the bill could be implemented using existing resources.

### **Local Government Impact**

According to the Texas Association of Counties, the fiscal impact to counties cannot be determined at this time.

**Source Agencies:** 302 Office of the Attorney General, 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

**LBB Staff:** UP, SZ, MW, MSO, JSm, JGA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 5, 2017**

**TO:** Honorable Lyle Larson, Chair, House Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2533** by Geren (Relating to civil suits brought by local governments or certain other persons for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2533, As Introduced: a positive impact of \$362,250 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2018	\$0
2019	\$362,250
2020	\$465,750
2021	\$569,250
2022	\$724,500

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Revenue Gain from General Revenue Fund 1</b>
2018	\$0
2019	\$362,250
2020	\$465,750
2021	\$569,250
2022	\$724,500

## **Fiscal Analysis**

The bill would amend Texas Water Code, Chapter 7 by adding Section 7.5311 to require a local government, a person affected, or an authorized agent to provide written notice to the executive director of the Texas Commission on Environmental Quality (TCEQ) and the Attorney General (OAG) before filing a civil suit that seeks a civil penalty; this notice would not be required if the suit seeks injunctive relief only. The written notice would include each alleged violation, the facts supporting the claim, and the specific relief sought. A civil suit may be instituted by a local government, a person affected, or an authorized agent on or after the 90th day after the OAG and the executive director of TCEQ receive the written notice, unless OAG has commenced a civil suit concerning at least one of the alleged violations, or OAG or the executive director of TCEQ deny authorization to the local government, person affected, or authorized agent to pursue a suit concerning the alleged violations in writing.

The bill would amend Texas Water Code, Section 7.351, which allows a local government, an affected person, or an authorized agent to bring a suit in the same manner as TCEQ for injunctive relief, civil penalties, or both. The bill would subject Section 7.351 to the added Section 7.5311, which would require written notice prior to filing the civil suit.

The provisions of the bill would apply only to a violation that occurs on or after the effective date of the Act. The bill would take effect September 1, 2017.

## **Methodology**

The bill would allow OAG and TCEQ to deny a local government, affected person, or authorized agent authorization to pursue a suit. OAG estimates that, of the cases referred by TCEQ subject to the provisions of the bill, approximately 10 percent would result in denials. OAG estimates approximately 20 percent of the cases would be initiated as administrative enforcement actions by TCEQ, and that approximately 10 percent of the referred cases would be result in the commencement of a civil suit by OAG. OAG estimates that the remainder of the referrals would be allowed to proceed, leading to suits filed by local governments, affected persons or authorized agents.

This estimate assumes that administrative penalties assessed by TCEQ would be comparable to the civil penalty that would have been assessed by a court under current law and would be deposited to the credit of the General Revenue Fund. This estimate further assumes that the total penalty amount assessed by the court in cases referred to OAG for enforcement would be deposited to the credit of the General Revenue Fund.

OAG estimates that the total number of suits referred for consideration will have a growth rate of approximately 25 percent per year. This would result in 19 referrals in fiscal year 2018; 23 in fiscal year 2019; 29 in fiscal year 2020; 37 in fiscal year 2021; and 48 in fiscal year 2022. Using OAG's estimate concerning the number of cases initiated as administrative enforcement actions by TCEQ and the number of cases that would result in the commencement of a civil suit by OAG, 30 percent of these referrals would result in the collection of either administrative penalties (in the case of TCEQ administrative actions) or civil penalties (in the case of OAG action). This estimate assumes that 30 percent of the referrals would result in revenue gains to the General Revenue Fund, or 3 in fiscal year 2018; 7 in fiscal year 2019; 9 in fiscal year 2020; 11 in fiscal year 2021; and 14 in fiscal year 2022. OAG estimates that fiscal year 2018 revenue collections would not be affected, as it usually takes several months after a violation has occurred to work up and file a lawsuit. Therefore, this estimate assumes no fiscal impact in fiscal year 2018. Future fiscal years would see a revenue gain approximately equal to the average recovery amount by local

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582 Commission on Environmental Quality

**LBB Staff:** UP, SZ, MW, MSO, JSm, JGA